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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEE EDWARD PEYTON,

Plaintiff,

v.

RANDY GROUNDS,

Defendant.

C 13-04232 VC (PR)

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO
WITHDRAW COMPLAINT**

Judge: The Honorable Vince Chhabria
Action Filed: September 12, 2013

INTRODUCTION

On November 25, 2014, Defendant filed a motion to revoke Plaintiff's *in forma pauperis* status under the Prison Litigation Reform Act's (PLRA) three-strikes rule. Plaintiff did not file an opposition to this motion, rather, he filed a motion to withdraw his complaint without prejudice. Plaintiff's motion should be denied because it is an attempt to avoid the PLRA's three-strikes rule and Plaintiff should be declared a "three-strikes" litigant.

ARGUMENT

The Prison Litigation Reform Act (PLRA) prevents prisoners from bringing civil actions *in forma pauperis* if they previously had three actions dismissed as frivolous, malicious, or for failure to state a claim:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g) (2011).

This provision of the PLRA has been upheld by the Ninth Circuit because “[b]udgetary concerns are a legitimate governmental interest and curbing the costs of defending against frivolous litigation is rationally related to maintaining the budget.” *Rodriguez v. Cook*, 169 F.3d 1176, 1180-81 (9th Cir. 1999). Here, Plaintiff filed a lawsuit that had to be screened by the court, Defendant filed an answer, and also filed a motion to revoke Plaintiff’s *in forma pauperis* status. In order to prevent Plaintiff from wasting future government resources, Plaintiff’s motion to withdraw the complaint should be denied and the Court should grant Defendant’s motion to revoke Plaintiff’s *in forma pauperis* status and declare Plaintiff a “three-strikes” litigant.

Plaintiff claims that his motion should be granted because he will soon be released from prison and will be able to pay the full filing fee for this action. (Pl.’s Mot. Withdraw Compl. at 2, ECF No. 27.) But declaring Plaintiff a “three-strikes” litigant would have no effect on Plaintiff’s ability to file a future lawsuit if he can pay the full filing fee. Rather, declaring Plaintiff a “three-strikes” litigant now takes away the privilege, afforded to him under the PLRA, to file lawsuits without first paying the full filing fee. Thus, Plaintiff’s motion should be denied and Defendant’s motion to revoke Plaintiff *in forma pauperis* status and declare Plaintiff a “three-strikes” litigant should be granted.

CONCLUSION

The PLRA grants inmates the privilege of filing lawsuits without first paying the full filing fee. But, this privilege does not apply to plaintiffs who have filed more than three lawsuits that

1 were dismissed as frivolous, malicious, or for failure to state a claim. 28 U.S.C. § 1915(g) (2011).
2 Because Plaintiff has previously filed four lawsuits that were dismissed for failure to state a
3 claim, his motion to withdraw his complaint should be denied and he should be declared a “three-
4 strikes” litigant.

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7 Dated: January 6, 2015

Respectfully submitted,

8 KAMALA D. HARRIS
9 Attorney General of California
10 MARISA Y. KIRSCHENBAUER
Supervising Deputy Attorney General

11
12 /s/ Elliott T. Seals
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13 Deputy Attorney General
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Peyton v. Grounds***
No.: **C 13-04232 VC (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 6, 2015, I served the attached

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO WITHDRAW COMPLAINT

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Lee Peyton, AN-8429
North Kern State Prison
P. O. Box 567
Delano, CA 93216
Pro Se

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 6, 2015, at San Francisco, California.

G. Garcia
Declarant

/s/ G. Garcia
Signature